

REMARKS

Entry of the foregoing amendments is respectfully requested.

Summary of Amendments

By the foregoing amendments claims 19-81 are cancelled and claims 82-144 are added, whereby 82-144 are pending, with claims 82 and 126 being independent claims.

Support for the new claims can be found in the cancelled claims and throughout the present specification (see, e.g., the title of the invention and the Examples).

Applicants point out that the cancellation of claims 19-81 is without prejudice and disclaimer, and Applicants expressly reserve the right to prosecute the cancelled claims in one or more continuation and/or divisional applications.

Summary of Office Action

As an initial matter, Applicants note with appreciation that the Examiner has indicated consideration of the Information Disclosure Statements filed September 14, 2004 and December 2, 2005 by returning signed and initialed copies of the forms PTO-1449 submitted therein.

Applicants also note with appreciation that the Examiner has acknowledged the claim for foreign priority. In this regard, Applicants respectfully request that the Examiner also acknowledge the receipt of a certified copy of the priority document, i.e., German Application 103 01 834.4, which copy was filed on July 7, 2004. Applicants note that while the PAIR system does not show the priority document as such, the supplemental claim of priority with which the certified copy of the

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priority document was filed is shown in PAIR. PAIR also contains an “Artifact sheet indicating that an item has been filed which cannot be scanned”. In the artifact sheet the document is identified as “FRPR” which is believed to represent “foreign priority document”.

The Restriction Requirement is made final and claims 20, 28-34, 39, 41, 43, 48, 50, 52, 56, 58, 63-65, 68, 69, 71, 73, 75, 77, 79 and 81 are withdrawn from consideration.

Claims 19, 21-27, 35-38, 40, 42, 44, 45, 46, 47, 49, 51, 53, 55, 57, 59-62, 66, 67, 70, 72, 74, 76, 78 and 80 are provisionally rejected under on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 19-77 of copending Application No. 10/759,160.

Claims 19, 21-27, 35-38, 40, 42, 44, 45, 46, 47, 49, 51, 53, 55, 57, 59-62, 66, 67, 70, 72, 74, 76, 78 and 80 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Riedel et al., U.S. Patent No. 6,558,680 (hereafter “RIEDEL”) in view of Chapin et al., U.S. Patent No. 4,370,319 (hereafter “CHAPIN”).

Response to Office Action

Reconsideration and withdrawal of the rejections of record are respectfully requested in view of the foregoing amendments and the following remarks.

Response to Provisional Rejection of Claims

Claims 19, 21-27, 35-38, 40, 42, 44, 45, 46, 47, 49, 51, 53, 55, 57, 59-62, 66, 67, 70, 72, 74, 76, 78 and 80 are provisionally rejected under on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 19-77 of copending Application No. 10/759,160.

Applicants respectfully request that this provisional rejection be held in abeyance until the Examiner has indicated allowable subject matter. Applicants will then decide whether the filing of a Terminal Disclaimer is appropriate.

Response to Rejection of Claims under 35 U.S.C. § 103(a)

Claims 19, 21-27, 35-38, 40, 42, 44, 45, 46, 47, 49, 51, 53, 55, 57, 59-62, 66, 67, 70, 72, 74, 76, 78 and 80, i.e., all claims under consideration, are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over RIEDEL in view of CHAPIN. The rejection is primarily based on the composition of Example 1 of RIEDEL and a passage in col. 11, lines 14-24 of RIEDEL wherein it allegedly is stated that the compositions disclosed therein may optionally contain cosmetic active ingredients such as dyes, pigments, surfactants and polymers. The rejection acknowledges that RIEDEL does not teach the addition of sodium hydroxide or potassium hydroxide but alleges that CHAPIN teaches skin conditioning compositions in which an alkaline agent such as sodium hydroxide is used to neutralize the composition.

Applicants respectfully traverse this rejection for several reasons. In particular, it is pointed out that the present independent claims recite that the claimed cosmetic or dermatological compositions are pearlescent. In this regard, the Examiner's attention is directed specifically to the comments in pages 1-3 of the present application, which comments should make it clear that providing a pearlescent composition is not a trivial thing to do. RIEDEL and CHAPIN do not appear to mention pearlescent compositions, let alone teach how pearlescent compositions (and in particular, pearlescent compositions which show good skin compatibility) can be obtained. For this reason alone, the cited documents are unable to render obvious the claimed compositions.

Applicants also emphasize that the mere fact that RIEDEL mentions “polymers” as one of many examples of optional ingredients, auxiliaries and additives which find use in cosmetic compositions is not seen as a motivation for one of ordinary skill in the art to add an amphiphilic polymer, an associative polymer and/or a siloxane elastomer to the composition of Example 1 (or any other composition) of RIEDEL. In fact, the Examiner has failed to cite a single document which might be considered to provide evidence that one of ordinary skill in the art would be motivated to choose an amphiphilic polymer, an associative polymer and/or a siloxane elastomer (for example, a polymer as recited, for example, in one of claims 86, 87, 89, 90-92 and 94) as polymer for addition to a composition of the type with which RIEDEL is concerned.

Applicants further note that present claims 102 and 126 recite that the composition is substantially free of mono- and di-fatty acid esters of glycerol and glycol. In contrast, according to, e.g., the abstract of RIEDEL the compositions disclosed therein contain 0.2-10 % by weight of fatty acid mono- and/or diglycerides (see also the composition of Example 1 of RIEDEL which contains 2.00 % by weight of glyceryl stearate), thereby even teaching away from the subject matter of claims 102 and 126 (and the claims dependent therefrom).

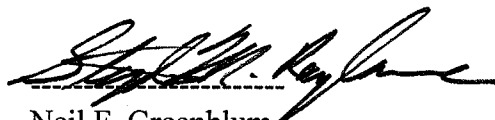
Applicants also fail to see where in the cited documents the use of a solubilizer and in particular, the solubilizer recited in present claims 119 and 144 is taught or suggested.

It is submitted that for at least all of the foregoing reasons, the Examiner has failed to meet the initial burden of establishing a *prima facie* case of obviousness of the claimed subject matter. In view thereof, the rejection under 35 U.S.C. § 103(a) over RIEDEL in view of CHAPIN is without merit, wherefore withdrawal of this rejection is respectfully requested.

CONCLUSION

In view of the foregoing, it is believed that all of the claims in this application are in condition for allowance, which action is respectfully requested. If any issues yet remain which can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted,
Silke KOHLHASE et al.

A handwritten signature in black ink, appearing to read "Neil F. Greenblum", written over a horizontal dashed line.

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